IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 899 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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HETALBHAI MANUBHAI BHAYANI

Versus

KOMALBEN, D/O. JAYPRAKASH TANNA AND W/O H.M. BHAYANI

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Appearance:

1. Special Criminal Application No. 899 of 2003

MR NV ANJARIA for Petitioner No. 1

MR JT TRIVEDI for Respondent No. 1-2

MR BJ TRIVEDI for Respondent No. 1,2

MR HIMANSHU TRIVEDI for Respondent No. 1,2

MR RC KODEKAR, APP for Respondent No. 3

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CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 15/10/2003

ORAL JUDGEMENT

#. Heard Mr.N.V.Anjaria, learned counsel for the petitioner, Mr.J.T.Trivedi, learned counsel for respondent nos.1 and 2 and Mr.Kodekar, learned APP for respondent No.3.

#. Mr.Anjaria has drawn my attention towards para 7 of the order passed in Criminal Revision Application No.21 of 2003, which categorically states that the court below, i.e. trial Court has proceeded further on the assumption that the process has been served upon the present petitioner, but, the facts are otherwise. The court below came to the conclusion that the process has not been served upon the concerned person at all. Under these circumstances, the parties have not asked for the reasoned order. Request is being made by the learned counsel for the respective parties that the orders passed by the both the courts are required to be quashed and set aside.

#. In the facts and circumstances of the case, the orders passed by both the courts below are quashed and set aside. Learned Judicial Magistrate, First Class is directed to decide the case in question on its own merits. Learned counsel for the petitioner - original respondent has assured this Court that the present petitioner will appear in the said matter either personally or through the advocate and he will give full cooperation for the purpose of deciding the same on merits. The parties have also requested that this being the maintenance matter, some directions may be given to the learned Magistrate to dispose of the same as expeditiously as possible. Hence, I pass the following order.:

The orders passed by both the courts below are quashed and set aside. Criminal Misc. Application No.887 of 2002 is ordered to be restored on file. The petitioner is directed to appear before the court below either personally or through the advocate on 7.11.2003. Learned counsel for the respondent - wife has given assurance that the respondent - wife will give cooperation for the purpose of deciding the matter finally. The matter is to be disposed of as early as possible and preferably within a period of four months. Learned counsel for the petitioner has made a statement at bar that the petitioner has deposited all arrears before the court below and he has no objection, if the respondent wife is permitted to withdraw the same. Under these circumstances, if the arrears has been deposited by the petitioner, the respondent wife is permitted to

withdraw the same. It is further directed that if the respondent - wife files any application for interim maintenance, the trial court shall decide the same on its own merits and in accordance with law. Office is directed to send the writ to the Court below forthwith.

#. In view of the above, this petition stands disposed of. Rule is discharged. Interim relief granted earlier stands vacated.

(R.P.Dholakia,J)
(pathan)